

JAN 29 1971

Kevin T. Maroney, Esquire
Deputy Assistant Attorney General
Internal Security Division
Department of Justice
Room 515 Federal Triangle Building
Washington, D. C. 20530

Dear Mr. Maroney:

In accordance with our discussion of January 14, I am transmitting herewith two legislative proposals designed to improve the ability of the United States to protect foreign officials and establishments against the kinds of violence and harassment to which Soviet personnel and property have been subjected in recent months. As you know, our present legislative initiative in this matter is in pursuance of steps agreed upon at the meeting between the Attorney General and the Under Secretary of State on January 12, 1971.

In our view, a most important legislative proposal is the one we discussed which was prepared late last year in the Criminal Division of the Department of Justice. The Criminal Division's draft bill would protect "foreign officials" against assault, murder, kidnapping and conspiracy to murder or kidnap. The broad definition of "foreign official" contained in the bill would afford protection against violent acts to the principal categories of persons of concern to the Department of State. The bill would also proscribe the bombing of or the unauthorized possession of explosives in property owned or leased by a foreign government or international organization. We have already given the Criminal Division our favorable comments on this bill. We hope that the Department of Justice will be able to submit it to the Congress at an early date.

Although the above-discussed draft bill would go far in improving the ability of the United States Government to fulfill its international responsibilities for the

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protection of foreign officials and property, it would not cover the full range of protective duties owed by a receiving State. International responsibility also extends to prevention of the disturbance of the peace or impairment of the dignity of foreign diplomatic and consular establishments. Permanent missions to international organizations are entitled to similar protection under treaties in force and international practice. In addition, harassment of other foreign officials and activities and interference in the performance of their functions can also give rise to serious international consequences, as recent events in New York City demonstrate. Accordingly, we believe that federal prohibition of such harassment and interference would be a useful addition to the provisions of the draft bill already under consideration, either as a separate proposal or by inclusion in the same bill.

There is enclosed at TAB A a draft bill directed against harassment of foreign officials. The text of this bill is intended to be compatible with the amendments to existing law proposed in the above-described Justice Department draft. This proposal would punish as a petty offense a number of specific acts when undertaken in a manner reasonably calculated to harass, annoy or alarm a foreign official as defined in the Criminal Division's draft bill. The description of the particular acts proscribed has been drawn in large measure from provisions of the New York Penal Law relating to disorderly conduct and harassment (Penal Law, sections 240.20, 240.25 and 240.26).

A significant addition in our draft to the acts described in the New York statute is the prohibition against congregating within 100 feet of an embassy, consulate, international organization property, or other place used or occupied by a foreign official with intent to harass, annoy or alarm him or to interfere with the performance of his duties. A New York court has held that the present New York statute does not authorize prohibition of picketing before a permanent mission of a foreign government to the United Nations. Accordingly, if such conduct is to be regulated, a specific statutory provision would appear

to be necessary. See People v. Salomonow, 56 Misc.2d 1050, 291 NYS2d 145 (1968).

Another legislative proposal which the Department of State believes merits consideration is one that would cause the premises of diplomatic missions, including missions to international organizations, to be included within the special maritime and territorial jurisdiction of the United States. This proposal would provide a basis for federal investigation and prosecution of offenses committed on such premises which would otherwise be exclusively within the jurisdiction of the State where the property is situated. A draft bill is enclosed at TAB B.

We are, of course, concerned that federal legislation in this area should not encourage State and local authorities to relax or diminish the protection they presently afford to foreign missions and their personnel. To emphasize our belief that local authorities bear a continuing responsibility for the safety of foreign officials and property, we have included an express nonpreemption clause in both the enclosed draft bills.

I am sure that you appreciate the urgency of the need for a demonstration of federal concern for the safety of foreign official visitors. The introduction of federal legislation along the lines discussed herein would in our judgment be most helpful in this regard. Moreover, the enactment of such legislation would provide a needed deterrent to further violence and harassment as well as proof to the international community of the resolve of the United States Government to take adequate measures for the safety and tranquility of foreign diplomatic and other official establishments. The Department of State would favor a meeting at an early date among the offices and agencies concerned, with a view toward facilitating coordination of a legislative package which could be submitted to the Congress with Administration support as soon as possible.

Please call me at 632-9500 when you have reviewed the enclosed proposals so that we can discuss arrangements

for such a meeting or other steps toward the development of an appropriate legislative package.

I am enclosing for your convenient reference at TAB C a copy of the draft bill prepared by the Criminal Division of the Department of Justice.

Your cooperation in this matter is appreciated.

Sincerely yours,

Charles H. Brower
Assistant Legal Adviser
for European Affairs

Enclosures:

TAB A - Draft bill directed against harassment of foreign officials.

TAB B - Draft bill that would cause the premises of diplomatic missions ... to be included within the special maritime and territorial jurisdiction of the United States.

TAB C - Justice Department draft bill to provide for expanded protection of public officials and foreign diplomats, and for other purposes.

Copies for: Mr. Belcher, Criminal Division.
Mr. Lehman, Office of Legal Counsel.
Mr. Coff, United States Secret Service.

Clearances:

S/CPR - Mr. Davis
O/SY - Mr. Gentile
O - Mr. Wilcoff
H - Mr. Leahy
IO/OIA - Mr. Hennes
EUR - Mr. Davies

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A BILL

Be it enacted by the Senate and House of Representatives in Congress assembled, That section 112 of title 18, United States Code, is amended to read as follows:

"(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to any person protected under section 1116 of this title,

shall be fined not more than \$5,000, or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

"(b) Whoever intimidates, threatens or harasses any person protected by section 1116 of this title or obstructs the performance of his duties shall be fined not more than \$500, or imprisoned not more than six months, or both. Any of the following acts shall constitute a violation of this subsection when committed in a manner reasonably calculated to harass, annoy or alarm any person protected by section 1116

of this title or to interfere with the performance of his duties:

- (1) wilfully subjecting such person to
unconsented physical contact or
threatening or attempting to do the
same;
- (2) using abusive, offensive or obscene
language or making an obscene gesture
or displaying an abusive, offensive,
or obscene placard, banner or similar
device toward such person in a public
place;
- (3) following such person in or about a
public place;
- (4) communicating or attempting to commu-
nicate with such person, anonymously or
otherwise, by telephone, telegraph, mail
or any other form of written communication;
- (5) otherwise engaging in a course of conduct
or repeatedly committing acts which alarm
or seriously annoy such person and which
serve no legitimate purpose;

(6) congregating with other persons within 100 feet of any embassy, consulate,

international organization property,

or other building, premises or other

place used or occupied or to be used

or occupied by such person with intent

to commit any of the foregoing acts

and refusing to disperse when ordered

to do so by authorities charged with

the protection of such person.

2. Nothing contained in this Act shall be construed as

indicating an intent on the part of Congress to occupy,

to the exclusion of the laws of any State, Commonwealth

of Puerto Rico, territory, possession or the District

of Columbia on the same subject, the field in which any

applications of this Act operate, nor shall this Act be

construed as having the effect of invalidating or creating

immunity from criminal prosecution under any provision of

State or local law.

A BILL

to extend the special maritime and territorial jurisdiction of the United States to diplomatic missions and for other purposes.

Be it enacted by the Senate and House of Representatives

of the United States of America in Congress assembled,

That section 7 of title 18 of the United States Code, is amended by adding at the end thereof a new paragraph as follows:

"(6) The premises of a diplomatic mission accredited to the United States or to an international organization as defined in section 288 of title 22 of the United States Code which has its headquarters within the territory of the United States, provided however that this paragraph shall not be construed as indicating an intention on the part of Congress to occupy, to the exclusion of the laws of any State, Commonwealth of Puerto Rico, territory, possession or the District of Columbia on the same subject the field in which any applications of this paragraph operate, nor shall this paragraph be construed as having the effect of invalidating or creating immunity from criminal prosecution under any provision of State or local law."

CONGRESS

Session

H. R.

(Note: Fill in all blank lines with
only those provided for the date
and number of bills.)

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to
the Committee on _____

A BILL

to amend title 18, United States Code, to provide for expanded protection of public officials and foreign diplomats, and for other purposes.
(Insert title of bill here)

1. *Be it enacted by the Senate and House of Representatives of the*
 2. *United States of America in Congress assembled, That section 1114 of chapter*
- 51, title 18, United States Code, is amended to read as follows:

"§1114. Protection of public officials of the United States.

"(a) Whoever kills any public official of the United States while engaged in the performance of his official duties, or on account of the performance of his official duties, or on account of his official position, or any member of such official's immediate family, in connection with or on account of the performance of official duties by such official or his official position, shall be punished as provided under sections 1111 and 1112 of this title.

"(b) For the purpose of this section 'public official' shall have the same meaning as that provided in section 201(a) of this title."

Sec. 2. Chapter 51, title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§1116. Protection of foreign officials.

"(a) Whoever kills any official of a foreign government or international organization, shall be punished as provided under sections 1111 and 1112 of this title.

"(b) For the purpose of this section 'international organization' shall have the same meaning as that provided in the Act of December 29, 1945, chapter 652, title I, section 1, 59 Stat. 669 (22 U.S.C. §228).

"(c) For the purpose of this section 'official' shall include any person of a foreign nationality who is (1) an officer or employee of a foreign government or international organization on official business in the United States, or ~~any~~ member of his immediate family whose presence in the United States is in connection with the presence of such officer or employee on official business, or (2) a Chief of State, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of cabinet rank or above, of any branch of the government concerned, or any member of his immediate family, while in the United States.

"§1117. Conspiracy to murder.

"If two or more persons conspire to violate sections 1111, 1114, or 1116 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

Sec. 3. The analysis of chapter 51, title 18, United States Code, is amended by adding at the end thereof the following new items:

"§1116. Protection of foreign officials.

"§1117. Conspiracy to murder."

Sec. 4. Section 1201 of chapter 55, title 18, United States Code, is amended to read as follows:

"§1201. Kidnapping.

"(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward, or otherwise any person, except in the case of a minor, by the parent thereof, when:

"1. - the person is knowingly transported in interstate or foreign commerce;

"2. - any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

"3. - any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section one of the Act entitled "An Act To Implement The Convention On Offenses and Certain Other Acts Committed On Board Aircraft", approved October 14, 1970, Public Law 91-449 (49 U.S.C. §1301); or

"4. - the person is any person protected under sections 1114 and 1116 of this title,

shall be punished by death if the person dies as a consequence, and if the verdict of the jury so recommends, or in the case of a plea of guilty or a plea of not guilty where the defendant has waived a trial by jury if the court in its discretion so orders; or by imprisonment for any term of years or for life, if the death penalty is not imposed.

"(b) The failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

"(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

Sec. 5. The analysis of chapter 55, title 18, United States Code, is amended by deleting "1201. Transportation", and adding the following:

"§1201. Kidnapping."

Sec. 6. Section 111 of chapter 7, title 18, United States Code, is amended to read as follows:

"§111. Assaulting Federal officials.

"(a) Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any public official of the United States while engaged in the performance of his official duties, or on account of the performance of his official duties, or on account of his official position or any member of such official's immediate family in connection with or account of the performance of official duties by such official or his official position, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

"Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

"(b) For the purpose of this section 'public official' shall have the same meaning as that provided in section 201(a) of this title."

Sec. 7. Section 112 of chapter 7, title 18, United States Code, is amended to read as follows:

"§112. Assaulting foreign diplomatic and other official personnel.

"Whoever assaults, strikes, wounds, imprisons, or offers violence to any person protected under section 1116 of this title, shall be fined not more than \$5,000, or imprisoned not more than three years, or both.

"Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both."

Sec. 8. The analysis of chapter 1, title 18, United States Code, is amended by deleting "111. Assaulting, resisting, or impeding certain officers or employees", and "112. Assaulting certain foreign diplomats and other official personnel", and adding at the beginning thereof the following new items:

"111. Assaulting Federal officials.

"112. Assaulting foreign diplomatic and other official personnel."

Sec. 9. Section 844(f) of chapter 40, title 18, United States Code, is amended as follows:

(a) by inserting after the words "the United States," the following language: "a foreign government, or an international organization (as defined in the Act of December 29, 1945, chapter 652, title I, section 1, 59 Stat. 669 (22 U.S.C. §288) or";

(b) by deleting the word "thereof" and inserting in its place the words "of the foregoing".

Sec. 10. Section 844(g) of chapter 40, title 18, United States Code, is amended as follows:

(a) by inserting after the words "the United States" the following language: ", a foreign government, or an international organization (as defined in the Act of December 29, 1945, chapter 652, title I, section 1, 59 Stat. 669 (22 U.S.C. §288) or";

(b) by deleting the word "thereof" and inserting in its place the words "of the foregoing".